

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GREGORY MADRID, a married man, and
NATALIE WEISBERG, a single woman,

Plaintiffs,

v.

CERTAINTTEED, LLC, a Pennsylvania limited
liability company as successor-in-interest to
CERTAINTTEED CORPORATION, a
Pennsylvania corporation,

Defendant.

CASE NO. C20-1285-JCC

ORDER

This matter comes before the Court on Plaintiffs’ amended motion to compel further responses and documents (Dkt. No. 37). Having thoroughly considered the parties’ briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS in part and DENIES in part the motion for the reasons explained herein.

I. BACKGROUND

Plaintiffs Gregory Madrid and Natalie Weisberg are neighbors who own homes built in 2006 roofed with Landmark shingles manufactured by Defendant CertainTeed. (Dkt. No. 8 at 1–2.) In 2015 or 2016, the company that cleans Ms. Weisberg’s gutters told her that the shingles on her roof were showing signs of degranulation, which can cause the roof to degrade faster than it would otherwise. (*Id.* at 3–5.) In 2019, Mr. Madrid noticed other neighbors replacing their roofs.

(*Id.* at 5.) A neighbor told him about a class action lawsuit filed by Paula and Joel Wetzel alleging that CertainTeed’s Landmark shingles were defective. (*Id.*) *See Wetzel v. CertainTeed Corp.*, Case No. C16-1160-JLR (W.D. Wash. 2016). Afterward, Mr. Madrid and Ms. Weisberg both requested that CertainTeed repair or replace their shingles but CertainTeed refused. (*See* Dkt. No. 8 at 5.)

Plaintiffs then filed the instant suit in which they allege that CertainTeed knew that its Landmark shingles are defective but covered it up and that the coverup violates Washington’s Consumer Protection Act (“CPA”), Wash. Rev. Code § 19.86 *et seq.* (*Id.* at 6–8.) Specifically, Plaintiffs allege that CertainTeed received “an unusual number” of warranty claims for Landmark shingles and required homeowners to sign confidentiality agreements before fixing their roofs so that others would not learn about the defective shingles. (*Id.* at 4–5.) Plaintiffs now argue that CertainTeed should pay them for the difference between what they paid for their homes, on the understanding that the shingles on their roof were not defective, and the current value of their homes, with the allegedly defective shingles. (*Id.* at 7–8.)

In January 2021, Plaintiffs served their First Interrogatories and Requests for Production in which they sought, among other information: (1) deposition transcripts from *Wetzel*, (2) the identities of all deponents in *Wetzel* and the topics on which they were deposed, (3) certain documents filed under seal in *Wetzel*, and (4) settlement agreements between CertainTeed and homeowners who submitted warranty claims. (Dkt. Nos. 43 at 4, 43-3 at 9, 12, 13.) CertainTeed objected to these requests as “vague, overly broad, [and] unduly burdensome.” (*See* Dkt. No. 43-3 at 9, 12, 13.) CertainTeed also objected to producing information subject to the stipulated protective order or filed under seal in *Wetzel*. (*See id.* at 13.) Plaintiffs now move to compel CertainTeed to produce this information.

II. DISCUSSION

A. Legal Standard

As the Court has repeatedly indicated, discovery motions are strongly disfavored. *See*,

1 *e.g.*, *Lillywhite v. AECOM*, 2020 WL 4501596, slip op. at 2 (W.D. Wash. 2020); *Williams v.*
 2 *Perdue*, 2020 WL 1703787, slip op. at 1 (W.D. Wash. 2020). Nevertheless, the Federal Rules of
 3 Civil Procedure provide that a party may move to compel the production of discoverable
 4 information. *See* Fed. R. Civ. P. 37(a)(1). “Parties may obtain discovery regarding any
 5 nonprivileged matter that is relevant to any party’s claim or defense and proportional to the
 6 needs of the case.” Fed. R. Civ. P. 26(b)(1). The Court has “[b]road discretion” over whether to
 7 compel discovery. *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002). A party that moves to
 8 compel “bears the burden of demonstrating that the information it seeks is relevant and that the
 9 responding party’s objections lack merit.” *Hancock v. Aetna Life Ins. Co.*, 321 F.R.D. 383, 390
 10 (W.D. Wash. 2017).

11 **B. Analysis of Discovery Requests**

12 1. Deposition Transcripts from *Wetzel*

13 Plaintiffs seek “all deposition transcripts from the *Wetzel* case.” (Dkt. No. 37 at 6.)
 14 CertainTeed argues that none are relevant, that portions are subject to the protective order in
 15 *Wetzel* or are under seal, and that more generally Plaintiffs’ request is overbroad. (Dkt. No. 42 at
 16 1, 4–5.) The Court does agree that production of “all” of the transcripts would be overbroad. *See*
 17 *King Cnty. & Merrill Lynch & Co., Inc.*, 2011 WL 3438491, slip op. at 3 (W.D. Wash. 2011)
 18 (holding that parties are not entitled to “cloned discovery” from other litigation and must show
 19 that the particular documents sought are relevant to the present litigation). But production of the
 20 deposition transcripts for the five CertainTeed employees referenced in Judge Robart’s order—
 21 Walton, Ivers, Roach, Stahl, and Deaton—is not. Moreover, they are relevant to this action. The
 22 Ninth Circuit “strongly favors access to discovery materials to meet the needs of parties engaged
 23 in collateral litigation. . . . Allowing the fruits of one litigation to facilitate preparation in other
 24 cases advances the interests of judicial economy by avoiding the wasteful duplication of
 25 discovery.” *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1131 (9th Cir. 2003).

26 CertainTeed argues that it need not produce these deposition transcripts because it

1 marked them as confidential under the protective order in *Wetzel* and filed portions of them
2 under seal. (*See* Dkt. No. 42 at 7–9.) This argument is not persuasive. CertainTeed can produce
3 deposition transcripts of its own witnesses without violating the protective order because
4 CertainTeed was the producing party. Moreover, to the extent CertainTeed raises confidentiality
5 objections, those issues are addressed by the *current* stipulated protective order. (*See* Dkt. No.
6 24.)

7 For the foregoing reasons, the Court ORDERS CertainTeed to produce unredacted
8 transcripts of the Walton, Ivers, Roach, Stahl, and Deaton depositions.

9 2. List of Deponents and Deposition Topics from *Wetzel*

10 Plaintiffs seek a list of all deponents from *Wetzel* and the topics on which they were
11 deposed. (Dkt. 37 at 6.) They argue that this information is relevant and likely to lead to
12 discoverable evidence because *Wetzel* and this case are similar. (*Id.* at 7.) The Court agrees that a
13 list of CertainTeed deponents and their job titles is relevant to Plaintiffs’ claims and is not unduly
14 burdensome for CertainTeed to create. Fed. R. Civ. P. 26(b)(1). At the same time, the Court
15 agrees with CertainTeed that producing a list of the topics on which each witness was deposed is
16 unduly burdensome, particularly because the Court is already compelling CertainTeed to produce
17 many of those deposition transcripts.

18 Therefore, the Court ORDERS CertainTeed to produce a list of the CertainTeed
19 witnesses deposed in *Wetzel* and their job titles or a certification that no additional CertainTeed
20 employees and witnesses were deposed beyond the five identified in Judge Robart’s summary
21 judgment order in *Wetzel*.

22 3. Documents Filed Under Seal in *Wetzel*

23 Plaintiffs seek the following documents filed under seal in support of the *Wetzel*
24 Plaintiffs’ motion for class certification and their opposition to CertainTeed’s motion for
25 summary judgment: Exhibits 7, 8, 11, 17, 18, 20, 22, 23, 31, 33–41, 43, 44, 48–51, and 54. (Dkt.
26 No. 37 at 1, 8.) Plaintiffs allege that Exhibits 7, 17, 20, 22, 23, and 48–50, which were filed by

1 *Wetzel* Plaintiffs with their response to CertainTeed’s motion for summary judgment, include a
2 CertainTeed memorandum, warranty data, and information about CertainTeed’s confidentiality
3 agreements with homeowners. (*Id.* at 4–5.) They argue these relate to CertainTeed’s knowledge
4 and “cover up” of the premature granular loss which supports Plaintiffs’ CPA claims. (*See id.*)
5 CertainTeed does not dispute the characterizations of these documents. (*See* Dkt. No. 42.) But it
6 argues that these documents are not relevant to Plaintiffs’ CPA claims because the Wetzels used
7 these documents to support claims *other* than their CPA claims. (*Id.* at 4.) Regardless, based on
8 the undisputed characterizations in this case and the descriptions provided in both the *Wetzel*
9 plaintiffs’ response and CertainTeed’s reply, these exhibits are relevant to Plaintiffs’ CPA
10 claims.

11 Therefore, the Court ORDERS CertainTeed to produce Exhibits 7, 17, 20, 22, 23, and
12 48–50 of *Wetzel* Plaintiff’s Declaration of Beth E. Terrell in support of Plaintiffs’ Motion for
13 Class Certification. CertainTeed need not produce Exhibits 8, 11, 18, 31, 33–41, 43, 44, 51, and
14 54 because Plaintiffs have failed to establish what they are or how they are relevant to this case.
15 (*See* Dkt. No. 37 at 8–9.)

16 4. Warranty Settlement Agreements

17 Finally, Plaintiffs seek settlement agreements between CertainTeed and homeowners in
18 three zip codes (98010, 98038, and 98042) who made warranty claims for their shingles. (Dkt.
19 No. 37 at 10.) Plaintiffs argue these agreements are relevant to their claims because they will
20 “show CertainTeed’s pattern of covering up its defective product.” (*Id.*) CertainTeed does not
21 dispute that these documents are relevant but objects to producing them because, it argues, they
22 are not admissible under Federal Rule of Evidence 408 and the information is confidential. (Dkt.
23 42 at 10.) CertainTeed’s Rule 408 argument is baseless. Documents “need not be admissible in
24 evidence to be discoverable.” Fed. R. Civ. P. 26(b)(1). Nor is CertainTeed’s confidentiality
25 argument persuasive. There is “no federal privilege preventing the discovery of settlement
26 agreements and related documents.” *Bd. of Trs. of Leland Stanford Junior Univ. v. Tyco Int’l*

1 *Ltd.*, 253 F.R.D. 521, 523 (C.D. Cal. 2008). Moreover, the protective order in the current
2 litigation is sufficient to safeguard the confidentiality of these documents. CertainTeed also
3 argues that the request for “any” settlement agreement is overbroad because it is not limited to a
4 specific time frame, nor to warranty claims “related to granular loss of Landmark 30 shingles.”
5 (Dkt. 42 at 10.) The Court agrees in part. Only settlement agreements related to granular loss
6 associated with the same kind of shingles that are on Plaintiffs’ roofs are relevant.

7 Accordingly, the Court ORDERS CertainTeed to produce warranty settlement
8 agreements between CertainTeed and homeowners in zip codes 98010, 98038, and 98042 solely
9 regarding granular loss for Landmark 30 shingles.

10 **III. CONCLUSION**

11 For the foregoing reasons, the Court GRANTS in part and DENIES in part Plaintiffs’
12 amended motion to compel further responses and documents.

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14 DATED this 3rd day of August 2021.

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18 John C. Coughenour
19 UNITED STATES DISTRICT JUDGE
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